
IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

LAURA CONROY,	:	
Plaintiff,	:	Civil No. 2:06-cv-867
vs.	:	ORDER & RULING
EDWARD SCHAFER, Secretary of Agriculture, United States, Department of Agriculture,	:	JUDGE CLARK WADDOUPS
Defendant.		MAGISTRATE JUDGE BROOKE C. WELLS

Currently before the Court is plaintiff "Motion For Order Requiring Defendant To Pay Nancy Dodd's Expert Deposition Fees And Expenses" in the amount of \$6,390.59.¹ For the reasons now stated herein, the Court requests additional information in the form of an affidavit clarifying the time Professor Nancy Dodd ("Ms. Dodd") spent preparing for her June 17, 2008, her deposition.

On June 17, 2008, defendant took the deposition of Ms. Dodd in Salt Lake City, Utah.² The deposition commenced at 9:25 a.m. and after several recesses and a lunch

¹Document No. 132.

²Plaintiff's Memorandum In Support, pg. 2; Document 133.

break, the deposition concluded at approximately 2:30 p.m.³ Thereafter, Ms. Dodd provided an invoice requesting reimbursement from defendant at the rate of \$275.00 per hour for 19.5 hours of “preparation and deposition time” through July 18, 2008.⁴

While defendant agrees to reimburse Ms. Dodd “for her travel and lodging expenses and for the time she spent providing actual testimony” defendant denies any obligation to compensate Ms. Dodd for time spent preparing for her deposition.⁵ Defendant argues that any further inquiry into the inherent “reasonableness” of Ms. Dodd’s preparation time is unnecessary since in her deposition Ms. Dodd stated that the only document she reviewed in preparation therefore was an eleven-page Amended Complaint.⁶ Additionally, defendant objects to Ms. Dodd’s reimbursement rate request of \$275.00 per hour, an amount \$75.00 per hour more than the consulting rate claimed in her expert report.⁷

Rule 26 of the Federal Rules of Civil Procedure provides that unless “manifest injustice would result,” the court must require the party seeking discovery to “pay the expert a reasonable fee for time spent in responding to discovery.”⁸ It is within the

³Plaintiff’s Memorandum In Support, pg 2; Document 133. Defendant’s Memorandum In Opposition, pg. 2; Document 134.

⁴Defendant’s Memorandum In Opposition, Exhibit D; Document 134-6.

⁵Defendant’s Memorandum In Opposition, Exhibit G; Document 134-9.

⁶Defendant’s Memorandum In Opposition, pg. 8; Document 134.

⁷See, July 20, 2008 Invoice; Document 134-6.

⁸Fed. R. Civ. P. 26(b)(4)(C)(i).

court's discretion to determine the reasonableness of an expert's deposition fees.⁹ When a party submits discovery costs, the court has discretion to "limit or alter those costs if they appear to be unreasonable."¹⁰ The ultimate burden of proving the reasonableness of fees requested is with the party seeking reimbursement.¹¹

Here, upon review of her deposition testimony, the Court is persuaded that Ms. Dodd's review of the Amended Complaint was in preparation for her expert report and in fact not the only document she reviewed in preparation for the deposition.¹² That said, however, the reasonableness of Ms. Dodd's request for reimbursement cannot be determined simply by a review of the submitted invoice. For that reason, the Court requests that within twenty (20) days of receipt of this Order Ms. Dodd submit an affidavit detailing her preparation¹³ for the said deposition to include information on the extensive materials and records reviewed.¹⁴ Ms. Dodd shall not be entitled to reimbursement for lunch and other breaks— time during which she was not preparing for

⁹Edin v. Paul Revere Life Ins. Co., 188 F.R.D. 543, 545-46 (D. Ariz. 1999).

¹⁰Knight v. Kirby Inland Marine Inc., 482 F.3d 347, 355 (5th Cir. 2007); *see also*, Chambers v. Ingram, 858 F.2d 351, 361 (7th Cir. 1988).

¹¹Fiber Optics Designs, Inc. v. New Eng. Pottery, LLC, 2009 U.S. Dist. LEXIS 119669, at *10.

¹²Dodd Deposition, at 33.

¹³ Plaintiff concedes that defendant is not responsible to pay for the time that Professor Dodd spent meeting with plaintiff's attorneys to review her preparation. *See*, Plaintiff's Memorandum In Support, pg 3; Document 133. *See also*, Boos v. Prison Health Services, 212 F.R.D. 578 (Kan. 2002).

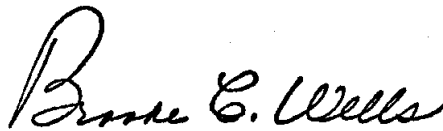
¹⁴ Plaintiff's Reply Memorandum, at 4; Document 135.

her testimony or actually testifying.¹⁵ Upon receipt and review of Ms. Dodd's affidavit, the Court shall issue a ruling determining what fees are reasonable and appropriate for reimbursement under Rule 26.

As a final matter, the Court finds that Ms. Dodd is entitled to an hourly rate of \$200.00, an amount consistent with the rate set forth in Ms. Dodd's expert report.¹⁶

DATED this 24th day of February, 2010.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells", written over a horizontal line.

Brooke C. Wells
United States Magistrate Judge

¹⁵See, Knight, at 356.

¹⁶Fed. R. Civ. P. 26(a)(2)(B)(vi); Fiber Optic Designs, at *3-5.